

No. 9/6/86-6Lab./1442. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV. of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of M/s Sumeru and Sehari 219 H.M.T. Ancillary, Industrial State, Panchkula.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA.

Ref. No. 237 of 1984.

(Old No. 390 of 1983)

SHRI SHAMSHER SINGH WORKMAN AND THE MANAGEMENT OF THE MESSRS SUMERU AND SEHARI, 219 H.M.T. ANCILIARY, INDUSTRIAL STATE PANCHKULA.

Present—

Shri Rajeshwar Nath, for the workman.

Shri W.L. Chopra, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—wide clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Shamsher Singh, workman and the Messrs Sumeru & Sehari, Panch Kula to Labour Court, Faridabad. The terms of the reference are as under—

"Whether the services of Shri Shamsher Singh were terminated according to law? If not, to what relief is he entitled?"

On constitution of Labour Court at Ambala in April 1984, so this reference was received by transfer.

Shamsher Singh workman through his demand notice alleged that he was in the employment of respondent as a operator since 2nd April, 1980 and had been working to the satisfaction of the management on 27th April 1983 his services were terminated by the management without any cause or reason, at that time he used to draw Rs. 520 p.m. He further alleged that termination of the service is illegal and unjustified as well as in contravention of section 25 (F) of the Industrial disputes Act, 1947. He prayed for his reinstatement with continuity in-service and with full back wages.

Respondent management contested this dispute contending that workman Shamsher Singh started absenting with effect from 27th April, 1983. On 28th April, 1983 a memo was issued directing the workman to report for duty and again on 16th May, 1983 a registered A.D. letter was written to him to report for duty but the efforts of the management proved futile and till to date. The workman never reported on duty inspite of best efforts. It was also contended that there is no termination of the workman from the side of management and there is no question of violation of provision of section 25(F) because workman has abandoned his job of his own. In fact the workman himself approached the management that his account be cleared. At that time Management made him clear that either he should be given notice for leaving service for one month or in lieu of notice period wages for one month be deposited with the management. But the workman failed to comply with these conditions and ultimately he preferred to absent from duty.

Workman filed rejoinder through that he controverted the allegations of the management.
On the pleadings of the parties the following issues were framed.

Issues:

1. Whether the termination order, dated 27th April, 1983 is justified? If not, its effect? OPM
2. Relief.

I have heard Shri Rajeshwar Nath A.R. for workman and Shri R.L. Chopra A.R. for management and have perused the evidence available on the file, after affording thoughtful consideration to the whole matter. My issue wise findings are as under—

Issue No. 1

In support of this issue management examined Shri Rajeshwar Nath as WW-1 who stated that on 27th April, 1983 workman Shamsher Singh came to him and wanted to settle his accounts finally and expressed his desire to leave the job of the management at that time he made Shri Shamsher Singh clear that either he should give a notice of one month to Management for leaving job or in lieu of notice period. He should be deposited one month wages.

Thereafter Shamsher Singh left the office of the management saying that he will inform the management about his decision on the next day and thereafter since 28th April, 1983 he had been absenting. Management wrote a letter, copy of the same is Ex-M-1 which was received undelivered. Another letters Ex-M-2 and M-3 were also written to the workman but all were received undelivered to the management. Thereafter, the workman filed demand notice in the office of Conciliation Officer. Notices from the office of Conciliation Officer were received late so management could not join Conciliation proceedings. At the time of filing written statement the management made offer to the workman and also prior to that before a Assistant Labour Commissioner that workman can join duty at any hour but he told the management that he will join duty and receive his dues in Court and not otherwise.

Shri Shamsher Singh workman appeared as A W^e1. He stated that in fact on 27th April, 1983 the management terminated his services and thereafter, he reported on duty but was not allowed to join duty by the management. When letters Ex-M-5 and M-6 were put to him he admitted that letter Ex-M-5 was received by him. And letter ex- M-6 is written by him. He admitted that the address written on undelivered letter is correct.

In view of the above evidence it is clear that in fact there is no termination order from the side of the management. The workman did not tender into evidence any letter issued by the management having been received by him as termination letter. Workman did not name of the Officer who asked him that his services have been terminated Nor any such Officer of the management was got examined on oath by the workman. Moreover, the workman himself admitted that a letter Ex-M-5 was received by him.— vide registered post which was containing and offer of joining service by the management for the workman. But on receipt of that letter workman did not prefer to report for duty but he on the other hand though it better to go to the Labour Leader for indulging in this Industrial Dispute.

Letter Ex-M-1 and Ex-M-2, and Ex-3 were addressed to the workman at his address which he had furnished to the management but those letters were received undelivered which shows the bona fide of the management that it was interested to retain the workman in service.

At the time of filing written statement, at the time of evidence and even at the time of arguments of this case. The management had been always prepared to take the workman in job. But the workman did not prefer to join the job of the management which shows that there is no termination of the workman by the management the allegation are not correct. In fact it is a case of abandonment of service by the workman himself. So this issue is decided in favour of management and against the workman.

Issue No. 2 Relief

For the fore-going reasons on the basis of my findings on issue No. 1, I pass award regarding the dispute in hand that in fact it is a case of abandonment of job by the workman and not termination from the side of management. So the dispute in hand is disposed of accordingly.

Dated 28th January, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 273, dated 30th January, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V.P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 29/6/86-6Lab./1854.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. General Manager, Milk Plant, Jind.

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 136 of 1984
(Old No. 7 of 1981)

SHRI JAI SINGH WORKMAN AND THE MANAGEMENT OF THE MESSERS THE GENERAL
MANAGER, MILK PLANT JIND

Present.—

Shri S.N. Vats, for the workman.
None, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred, — *vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Jai Singh and Messrs Milk Plant, Jind, to Labour Court, Rohtak. The terms of the reference are as under :—

Whether the termination of services of Shri Jai Singh, workman was justified and in order, if not to what relief is he entitled ?

Labour Court, at Ambala was constituted in April, 1984 so this reference was received by transfer.

Workman Jai Singh through his demand notice alleged that he joined service of respondent on 14th October, 1973 as a Compressor Helper and had been serving the respondent upto 31st May, 1980 on daily wages. He had been in the service of respondent management for more than 240 days. On 31st May, 1980 his services were terminated on the intervention of Labour Office, Hissar. He was again taken in service by the respondent on 15th December, 1980 and was again terminated on 14th March, 1981 illegally. He has prayed for his reinstatement with continuity in service and with full back wages.

Respondent management contested the present case and contended that the application is not maintainable being not in proper form. It was also contended that applicant was serving the respondent on daily wages and was not entitled to any protection for such services. Applicant's services were terminated when not required by the management. His services were dispensed with in accordance with terms of his appointment which was on purely temporary and *adhoc* basis after the end of work he could not be retained in service and there was no vacancy for which he could be retained. Workman is not entitled to the relief of his reinstatement and claim of T.A.D.A.

On the pleadings of the parties the following issues were framed by my Ld. predecessor on 12th October, 1981.

Issues :

- As per the terms of reference.

I have heard Shri S.N. Vats A.R. of workman and have perused the evidence present on the file. My issue wise findings are as under .

Issue No. 1

Since the onus of the issue was upon the management. So management examined Shri Raghbir Saran Time Keeper, Milk Plant, Jind who stated that Jai Singh was retrenched on 14th March, 1981. He worked only for 158 days. Exhibit M-1/1 is record of office presence before 1980. Jai Singh was posted in sub-office Bhuna, District Hissar. Record regarding service length of Jai Singh pertaining to Bhuna Sub-office is not available. Workman was employed on *adhoc* basis. In cross examination he stated at the time of retrenchment of Jai Singh all other *adhoc* workers were also terminated. He also stated that after the retrenchment of Jai Singh no other person was appointed as Compressor Helper.

Workman Jai Singh appeared as AW-1. He stated that in 1977 he joined as a Compressor Helper at sub-office Bhuna which is branch office of Milk Plant, Jind. He worked upto 31st May, 1980 at sub-office Bhuna and thereafter his services were terminated at that time no notice regarding termination of services was given to him. Nor any retrenchment compensation was paid to him. He filed demand notice with Labour Officer. Management appeared in the office of Labour Officer. Where matter was compromised and he was again taken in service written compromise is Exhibit A-1 and copy of experience certificate is Exhibit A-2.

When his services were again terminated on 14th March, 1981. He was again not given any notice nor any compensation towards his retrenchment was paid to him.

In view of this evidence at least one fact is clear that after 31st May, 1980 up to 14th March, 1981 Jai Singh workman remained in the employment of respondent management at Jind and worked for 158 days as admitted by MW-1. It is also admitted by MW-1 that Jai Singh remained in the service of respondent management since 1977 to 1980. His place of posting during that period was at sub-branch office Bhuna. Experience certificate Exhibit A-2 also reads that it certified that Shri Jai Singh Son of Dhanpat Singh has worked as a Compressor Helper at Milk Plant, Hissar from 14th October, 1977 to 21st February, 1979 as a Daily wager at the rates of Rs. 7 per day. So it is clearly established that Jai Singh workman remained in the employment of respondent management more than 240 days, so section 25(F) of Industrial Disputes Act, 1947 is applicable to this dispute.

MW-1 did not state that when the services of Jai Singh workman were terminated, a notice regarding the termination or pay in lieu of notice period was given to him. He also did not admit that retrenchment compensation was paid to him. When it has been denied specifically by workman Jai Singh when he appeared as AW-1. In the case in hand there is a violation of section 25(F) of the Industrial Disputes Act, 1947. So the retrenchment of Shri Jai Singh workman illegal as well as unjustified, so this issue is decided against the management in favour of workman.

I order reinstatement of Jai Singh from the date of his termination that is 14th March, 1981 with continuity in services as well as with full back wages. I pass award regarding the controversy between Shri Jai Singh and Messrs Milk Plant, Jind, accordingly.

Dated the 15th January, 1986.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endorsement No. 197, dated 20th January, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

No. 9/6/86-6 Lab./1855.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Indian Sulphacid Industries Ltd., G.T. Road, Shahbad Markanda.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 209 of 1984

(Old No. 80 of 1983)

SHRI B.N. GAUTAM, WORKMAN AND THE MANAGEMENT OF THE MESSRS INDIAN
SULPHACID INDUSTRIES LTD., G.T. ROAD, SHAHBAD MARKANDA

Present.—

Shri Madhu Sudan, for the workman.

Shri D.S. Walia, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred, —*vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 originally referred dispute between Shri B.N. Gautam and the Messrs Indian Sulphacid Industry Ltd., Shahbad Markanda to Labour Court, Faridabad. The terms of the reference are as under :—

"Whether the termination of services of Shri B.N. Gautam, workman was justified and in order, if not to what relief is he entitled ?"

In April, 1984, Labour Court at Ambala was constituted so this reference was received by transfer.

Workman in his claim statement alleged that he was employed in the respondent management factory as a workman on a permanent job. His services were terminated in violation of section 25(F) of the Industrial Disputes Act, 1947. In spite of the fact that settlement had arrived at between the parties on 22nd April 1982 and 7th October, 1982 respectively. Workman has prayed for his reinstatement with full back wages and continuity in service.

Management contested the dispute and contended that in fact the workman was in the employment of respondent only for limited period. He had not completed 240 days and moreover he abandoned his services of his own after taking his dues in full and final settlement. It was further contended that workman estopped by his own act and conduct. The dispute, in question is beyond scope of section 2-A of Industrial Disputes Act, 1947 and reference was like the present one is called for. The claim statement has not been signed and verified by the workman so it is also bad. It was also specifically contended that on 30th October 1982 Shri B.N. Gautam approached the management that he has to go to his home town so he should be paid his dues in full and final settlement. Accordingly full and final payment was made to him. So section 32 (2) (B) is not attracted in this case.

On the pleadings of the parties the following issues were framed for the just decision of this case.

Issues—

1. Whether the termination order dated 28th September, 1982 is just if not its effect ? OPM
2. Whether applicant is estopped by his own act and conduct if so its effect ? OPM
3. Whether the reference is not covered under section 2-A of Industrial Disputes Act, 1947 ? OPM.
4. Whether the claim has not been signed and verified by the workman if so its effect ? OPM.
5. Relief.

I have heard Shri Inder Singh assisted by Shri Madhu Sudan A.R. of workman and Shri D.S. Walia for respondent-management and have perused the evidence present on the file. My issue wise findings are as under :—

Issue No. 1:

In support of this issue management examined MW-1. Shri Brij Mohan Sharma who stated that he has been working as a Works Manager in the respondent. Shri B.N. Gautam workman was employed as a casual Labourer since 1st May, 1982. He was marked at present for the days for which he worked for the management. Photo stat copy of his presence are Exhibit M-1 to M-5 thereafter; he absented on 27th September, 1982 and on 30th October, 1982. He took his full and final payment. Photostat Copy of the same Exhibit M-8 it bears his signatures conciliation report is Exhibit M-9.

MW-2 Shri S. Verma, Assistant Manager of the respondent concern has also corroborated the testimony of M-1.

Shri B.N. Gautam appeared as AW-1 he stated that he remained in the employment of respondent management 1½ year the management at the time of removing him from its service did not issue any notice nor paid any pay in lieu of notice period, nor retrenchment compensation was paid to him. In cross-examination he admitted his signatures on Exhibit M-8 which is receipt of full and final payment as well as of settlement between the parties. In cross-examination he also admitted that in the month of September, 1982, he remained ill for few days and reported on duty only for 23 days in that month.

In view of above evidence I am of the considered opinion that the case of the workman is that his services were terminated illegally by the management while the management has put its case that it is the workman who had voluntarily left the service of management after receiving his full and final payment. MW-1 and MW-2 both are the employees of respondent management they are not at all interested in the respondent firm. Their statements are supported with documentary evidence Exhibit M-1 to M-5 which reads that workman worked only for six months in the respondent concerned Exhibit M-7 is a firm of provident fund while Exhibit M-8 is a receipt regarding full and final payment and settlement between the parties. The testimony of both these witnesses has not at all been shaken by the workman on any ground of any type. There is no suggestion of any enmity from the side of the workman against these two witnesses even the workman fails to cross-examine these two witnesses on the ground that the workman had been taking active part in the union activities which was eye sore to the management and on that very account his services were terminated. Such a plea has been taken by the workman in his claim statement but this plea was not put to the witnesses when they appeared in the witness box. Shri B.N. Gautam workman knows how to read and write English language. He has signed in English Language on all papers and receipt Exhibit M-8 also is in English language which bears his signature and he has admitted these signatures in his cross-examination. So on the basis of evidence present on the file I reach at the conclusion that in fact, it is a case of abandonment of service from the side of the workman and there is no question of retrenchment of services of workman from the side of management.

In 1984 Labour Law Notes Vol-25 Bombay as page 297 in case *Sita Ram Vishnu versus Administrator Government, Goa and others* held that the employee contended that he was removed from service while the contentions of the employers was that the employee abandoned the job of his own. Reference to this effect was made to the tribunal further held that the tribunal could not travel reference and decided the question whether the workman had abandoned his service or that the employer had terminated the service of the workman. It was observed that the subject matter of the reference itself was bad and was liable to be quashed.

So in view of my above discussions on the basis of the evidence present on the file I have to draw conclusion that in fact workman abandoned the job of the management of his own and his services were not terminated, so this issue is decided in favour of management against the workman.

Issue No. 2 :

In the case in hand the workman is estopped from filing demand notice as well as statement of claim because from the statement of MW-1, MW-2 and Ex. M-8 receipt of full and final settlement it is proved to the hilt that the workman has left the service of management of his own, so he is estopped from filling the demand notice and statement of claim by his own act and conduct. Similar observation have been made in 1968 LLJ Vol-1 page 358 titled *Andhra Landary versus Additional Labour Court, Madras* and others in which it was held that the workman receiving the amount in full and final settlement of his claim and passing on receipt to this effect to the management. In these circumstances such a workman is estopped from putting forth claim for the statutory benefit and deemed to have waived his right.

So the case in hand Shri B.N. Gautam submitted receipt Exhibit M-8 in token of having received full and final payment towards his settlement with the management, so he has estopped from filing the present case against management. So this issue is decided in favour of management against the workman.

Issue No. 3 :

The present reference is not covered under section 2-A of Industrial Disputes Act, 1947, because in this case workman has voluntarily abandoned his job and there is no question of any illegal or legal retrenchment on the part of the management, so this issue is also decided against the workman in favour of management.

Issue No. 4 :

Claim statement has been properly signed and verified by the workman. So this statement of claim is bad in the eyes of law, so this issue is decided in favour of management against the workman.

Issue No. 5 Relief :

For the foregoing reasons on the basis of issue wise findings workman is not entitled to reinstatement because he himself left the job of management. So no relief is available to him. I pass award regarding the dispute in hand accordingly.

Dated 20th January, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 281, dated 30th January, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.